

CLAY COUNTY PLANNING AND ZONING COMMISSION MINUTES

July 2, 2013

Regular meeting of the Clay County Planning and Zoning Commission, Commission Hearing Room, 3rd Floor, County Administration Building, One Courthouse Square, Liberty, MO.

Call to Order at 6:30 pm.

Roll Call

Members Present: Gene Knisley, Jim Carlson, Mark Beggs, Karl Walters and Cecil Troutwine

Members Absent: Barbara Ball

Staff Present: Matt Tapp, Director
Debbie Viviano, Planner
Tim Flook, Assistant County Counselor
Angie Stokes, Secretary

Mr. Knisley: Good evening ladies and gentlemen welcome to the July 2, 2013 Planning and Zoning Commission meeting would like to call the roll please, Director.

Mr. Tapp: Karl Walters?

Mr. Walters: Present.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Here.

Mr. Tapp: Jim Carlson

Mr. Carlson: Present.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Present.

Mr. Tapp: Gene Knisley?

Mr. Knisley: Present, thank you. We have the approval of four months of minutes and we will vote on each one separately, we'll start with the March 5th minutes.

Mr. Tapp: Mr. Chairman if I may interject after clarification from legal counsel it was decided that even though the members that are present here this evening were not present at those meetings that as long as we've got verification from the members that they were there and that they have no issue or no problems with the minutes as they are typed up that the board that's made up right now tonight is more than welcome and can approve the minutes. Even though you were not at the meeting you're voting on the accuracy of the minutes of the meeting. And if we got written correspondence from the folks that were there saying "yes" Then it is certainly in your powers to do that. Tim if you want to add anything.

Mr. Flook: I was just going to say it's up to you if you are comfortable with the information in front of you, if you were not a member of the Commission and you feel like you are comfortable that it's accurate based on what you have received you are free to vote yes, if you feel like that you are not sure you are not comfortable then you are free to abstain. So it's really up to you.

Mr. Tapp: So as a follow up to that Mr. Chairman the March minutes I believe we got correspondence from Jeff Richerson and Jim Edwards and they indicated they had no issues, there is no inaccuracies in the minutes as it is typed up so they said it was okay. And then June minutes Barbara Ball who's not here tonight she says she has no issues with the minutes as it is typed up, so those were the two I believe.

Mr. Knisley: Alright I think that's fine we will vote on the March 5th minutes. Do I have a motion to approve the March 5th minutes?

Mr. Beggs: Mr. Chairman I make a motion that we approve the March 5th Planning and Zoning Commission minutes as written.

Mr. Knisley: Thank you there has been a motion to approve 2nd?

Mr. Walters: Second.

Mr. Knisley: Thank you, vote please.

Mr. Tapp: Karl Walters?

Mr. Walters: Approve.

Mr. Tapp: Cecil Troutwine?

Ms. Troutwine: Approve.

Mr. Tapp: Jim Carlson?

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approve.

Mr. Tapp: Chairman Gene Knisley?

Mr. Knisley: I will abstain I was not here you have plenty to approve that. The April 2nd minutes do I have a motion to approve?

Mr. Beggs: Mr. Chairman I make a motion that we approve the April 2nd Clay County Planning and Zoning Commission minutes as written.

Mr. Knisley: Thank you do I have a second?

Mr. Walters: Second.

Mr. Knisley: Thank you vote please.

Mr. Tapp: Karl Walters?

Mr. Walters: Approve.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Approve.

Mr. Tapp: Jim Carlson?

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approve.

Mr. Tapp: Chairman Gene Knisley?

Mr. Knisley: Approve. Next minutes are the April 11, 2013 do I have a motion to approve those minutes?

Mr. Beggs: Mr. Chairman I make a motion that we approve the April 11, 2013 Clay County Planning and Zoning Commission minutes as written.

Mr. Knisley: Thank you there's been a motion to approve, second please.

Mr. Walters: Second.

Mr. Knisley: Thank you, vote please.

Mr. Tapp: Karl Walters?

Mr. Walters: Approve.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Approve.

Mr. Tapp: Jim Carlson?

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approve.

Mr. Tapp: Chairman Gene Knisley?

Mr. Knisley: Approve. Thank you the last one is the June 4th minutes of last month; do I have a motion to approve those minutes?

Mr. Beggs: Mr. Chairman I make a motion that we approve the June 4, 2013 Clay County Planning and Zoning Commission minutes as written.

Mr. Carlson: Mr. Chairman I have one correction.

Mr. Knisley: Yes.

Mr. Carlson: Before we approve it, page four my comment in the middle of the page it says the Department of National Resources I would like to correct that to say Natural or FEMA rather than National.

Mr. Knisley: So noted, did you catch that Debbie?

Mr. Tapp: I believe the Department of Natural Resources, Jim, then or FEMA?

Mr. Carlson: Or FEMA.

Mr. Knisley: Thank you for the correction. I forget where we were.

Mr. Beggs: Do you need a new motion?

Mr. Tapp: Yes.

Mr. Beggs: Mr. Chairman I make a motion that we approve the June 4, 2013 Clay County Planning and Zoning Commission minutes as amended.

Mr. Knisley: Thank you; there's been a motion to approve with amended, 2nd.

Mr. Carlson: I'll second.

Mr. Knisley: Thank you, vote please.

Mr. Tapp: Karl Walters?

Mr. Walters: Approve.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Approve.

Mr. Tapp: Jim Carlson.

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approve.

Mr. Tapp: Gene Knisley?

Mr. Knisley: I was absent at that meeting I will abstain. We have a report for the month of June among us, Commissioners, if you take a few minutes to look and have any questions or comments feel free to bring those up now.

Mr. Tapp: As you'll see it highlights our steady ascent out of the doldrums of the recession, so we're up in revenues received as well as general permitted activates across the board.

Mr. Knisley: Yes it is good to see. Being no comments or questions we'll proceed. This evening we'll be electing our Vice-Chairman and I would like to move that process toward the bottom after our four cases. This is a regular meeting and it is recorded and our staff report will be included as part of the minutes for the record. That being said we will proceed with four cases this evening and before I mention that we have this down at the bottom of the sheet of our agenda. I would like to mention that now because if some of you people care to leave after your case is heard and you're had your comments you won't miss this statement and the statement is Planning and Zoning will present our cases whether approved or disapproved to the County Commission for their review on July 22nd, that will be here in this room and it's important if you will come because you can express (*pause*) your expression about the cases or your comments so it is important that you do come to it, so that being said we'll start our four cases this evening. First case is dated July 13-111F; it's a request for final plat approval of Lazy J Ranch, A Replat of Lot 1A, Replat of Lazy J a proposed subdivision located at approximately 6907 Nebo Hills Road. The applicant is Delbert Gaddis, representing John Sloan. Can we have a report on that Director Tapp.

Mr. Tapp: Yes Mr. Chairman, I would like to add the staff report as part of the record.

Mr. Knisley: So be it.

Mr. Tapp: Summarized the staff report July 13-111F dated June 3, 2013.

Mr. Knisley: Thank you Director. Do you have a representative of the applicant here or the representative?

Mr. Tapp: Yes.

Mr. Knisley: Do you care to make any comments; we are talking about the final plat. You need to come up and state your name for the record plus we want to make sure you are here.

Mr. Gaddis: Delbert Gaddis and I guess everything is all ready to go I'm agreeing with everything they came up with.

Mr. Knisley: You are in agreement, I know last month there was some good debate on it.

Mr. Gaddis: Yes we've agreed all parties.

Mr. Knisley: You have met with the staff and Mr. Tapp?

Mr. Gaddis: Yes.

Mr. Knisley: Alright are there any comments or questions from the Commission to this applicant? Any comments from the public? Being none, thank you sir.

Mr. Gaddis: Thank you.

Mr. Knisley: Being none do I have a motion for the request for final plat approval of Lazy J Ranch?

Mr. Beggs: Mr. Chairman I make a motion that we approve the Final Plat of Lazy J Ranch, A Replat of Lot 1A, Replat of Lazy J.

Mr. Knisley: Thank you.

Mr. Beggs: There are conditions.

Mr. Knisley: Yes.

Mr. Beggs: With the conditions that are shown on Exhibit A.

Mr. Knisley: Thank you, we have a motion to approve with three conditions, do I have a second please.

Mr. Walters: Second.

Mr. Knisley: Thank you, we have a second, vote please.

Mr. Tapp: Karl Walters?

Mr. Walters: Approve with conditions.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Approve.

Mr. Tapp: Jim Carlson?

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approved with conditions.

Mr. Tapp: Chairman Gene Knisley?

Mr. Knisley: Approved with conditions.

**Final Vote: 5/0/0 Approve Final Plat July 13-111F; Lazy J Ranch
With Three (3) Conditions**

Mr. Knisley: Case number two this evening is case number July 13-112F a request for final plat approval for the proposed subdivision of Morton Acres located at approximately 13800 Carmel Road. The applicant is Ronald E. Morton, representing Morton Asset Management, LLC. Can we have the report please?

Mr. Tapp: Yes Mr. Chairman, first I would like to add the staff report as part of the record.

Mr. Knisley: So be it.

Mr. Tapp: Summarized the staff report July 13-112F dated May 29, 2013. We received an e-mail from Mrs. Morton, unfortunately they were not available to come this evening and I'll just read it verbatim so you know exactly what Mrs. Morton said "We have read the staff report and agree to the conditions". So therefore staff recommends approval of the final plat, with the conditions outlined in Exhibit A.

Mr. Knisley: Alright thank you. The applicant is not here are there any comments first from the public concerning this request? Being none are there any comments or questions from the Commission? Being none do I have a motion to approve the final plat approval of Morton Acres?

Mr. Beggs: Mr. Chairman I make a motion that we approve the final plat of Morton Acres with the conditions as shown in Exhibit A.

Mr. Knisley: Thank you; there has been a motion to approve with conditions, second?

Mr. Carlson: I'll second.

Mr. Knisley: Thank you; there has been a second vote please.

Mr. Tapp: Karl Walters?

Ms. Walters: Approve with conditions.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Approve.

Mr. Tapp: Jim Carlson?

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approved with conditions.

Mr. Tapp: Chairman Gene Knisley?

Mr. Knisley: Approve with conditions.

**Final Vote: 5/0/0 Approve Final Plat June 13-112F; Morton Acres
With Two (2) Conditions**

Mr. Knisley: Case number three is number 113RZ/F a request for rezoning from Residential Low Density District (R-1A) to Residential Urban Rural Single-Family District (RU-80) for proposed LOT 2 ONLY and Residential Rural District (R-1) for proposed LOT 1 ONLY and final plat approval for the proposed subdivision of Winterfell Highlands, A Replat of Lot 1 Golden Acres located at approximately 14917 Mt. Olivet Road. The applicants are Michael and Kara Ballenger. Do we have a staff report, please?

Ms. Tapp: Yes Mr. Chairman first of course I would like to add this staff report as part of the record.

Mr. Knisley: So be it.

Mr. Tapp: Summarized the staff report July 13-113RZ/F dated May 29, 2013. The applicant is here as well as her father to answer any further questions that the Commission may have.

Mr. Knisley: Thank you Director. Would the applicant please come to the podium and state your name for the record.

Ms. Ballenger: My name is Kara Ballenger.

Mr. Knisley: Kara have you read the staff report and you are in agreement with what they have stated?

Ms. Ballenger: Yes.

Mr. Knisley: Do you have any other questions for the Commission or anything at this time?

Ms. Ballenger: No.

Mr. Knisley: Alright are there any comments from the Commission to the applicant concerning the rezoning of this property? Being none comments from the public?

Mr. Tapp: Mr. Chairman I would like to interject here, we did receive an e-mail from the original property owners of Golden Acres and they live to the east I do believe, north and east of the subject location or at least in the general vicinity, I am not going to read it verbatim but they had concerns since that they had some conditions, if you will or some stipulations in the sales contract way back in '96 that said that this property cannot be further subdivided, as Tim Flook will chime in just like convenience or restrictions for HOA's it does not apply nor have jurisdictional control or authority over how all you decide on future development, future land use, so bear that in mind since it has no say in this matter and they also go on and talk about, October 1999 it is believed that they came before staff at the Planning and Zoning Department, I was not there, Debbie may have been there, but we don't have any records of the letter discussing this rezoning request constitutes spot zoning by benefiting the Reardon's with a zoning classification incompatible with the surrounding land uses and is contrary to the guidelines of the Comprehensive Plan. The development of this property with high density, multifamily housing could have a negative effect on the character...." Now we could not find this letter, not to say it didn't exist or it wasn't written, I am not saying that, but a few red flags pop in my head when I read that. First and foremost it's an old Comprehensive Plan so it has no say in the matter now because we have a new 2008 Comprehensive Plan and this request meets the spirit and jest of that document. Secondly, the letter talks about some type of multi-family housing and the Ballenger's are not requesting that, it may be a matter of interpretation to mean multiple houses, multiple lots. Perhaps that is what they are trying to say, but multi-family tends to be garden style apartments at least townhomes, some shared-wall development which clearly the Ballenger's are not requesting. So we respect the Reardon's and appreciate their input; however, as I highlighted any type of stipulation to sales contracts have no say in the County's decision upon a future development such as this. Nor does an old Comprehensive Plan have any type of guidance. So something to consider and we promised that we would inform the Commission of their viewpoints and we have done so.

Mr. Knisley: Thank you.

Mr. Carlson: Matt may I ask a question does the staff do any title search on items like this are there any restrictions recorded in the title, Matt?

Mr. Tapp: I'm sorry?

Mr. Carlson: Do you do any kind of title search of any recorded restrictions in the title?

Mr. Tapp: We don't do a title search no, we do check to make sure that they are in fact the owner of the property because you can't weigh in on an action on a property if it's not a property owner requesting it.

Mr. Carlson: So we don't know that title may have a stipulation that this cannot be divided, I know my title....

Mr. Tapp: It may, but again that has no say in a rezoning or a plat request to this Commission.

Mr. Flook: That what you are talking about is some type of real convenience. I can't think of the term for it, but within the deed it would have run with the land.

Mr. Carlson: But like in my deed it says it cannot contain the natural resources and I can't have hogs I know those are two stipulations and I don't know what other stipulations that they are talking about.

Mr. Flook: Your deed has what is called a real covenant and if it is designed so it's a real covenant if it runs with the land and so when you leave and the next person buys, they're subject to it and that is considered real covenant and just a stipulation that is a private matter between these land owners and the prior sellers and they probable should check that out with the title company or with their lawyer.

Ms. Ballenger: There's no stipulation that it cannot be subdivided and I can produce that title for you guys if you need that.

Mr. Flook: I was going to say for this group the only thing that you are able to decide is whether or not their application is meeting our Comprehensive Plan and if your satisfied then that is all they need now, as far if there was a deed restriction dispute brought up. If the other party isn't satisfied and they try and raise the issue that will turn into a private dispute and the outcome of that maybe these folks are right and they get to proceed based on what you all approve if it turns out it goes the other way, and they I would imagine withdrawal of their application or something like that. That is something we can't control, it's important, I think the main importance of this is that you do have a citizen out there who has a potential objection so that is certainly one we want to make sure that we follow the rules closely.

Mr. Knisley: Thank you Counselor.

Mr. Beggs: So if we approve the final plat and its recorded then there is a lawsuit that whoever says they can't subdivide it then does that come back and the plat has to be taken back off the record.

Mr. Tapp: I know my answer but I want to hear it from Legal Counsel.

Mr. Flook: I think the question will be is, I would have to look at this a little bit more closely, most likely what would happen is, without having researched a little more, I think what would happen is that the grieved party would file some sort of action to enforce the deed restriction if it existed and ask for restraining order on their proceeding with this application. And a restraining order would be upon the party and not upon us and then they would contact us and say we are under a temporary restraining order we are delaying this over. But there is a lot that goes into that they would have to put up a cash bond to cover their damages in case they lost, a lot goes into that, so I agree with Matt and think you proceed as is we just be mindful that no news is good news, I guess, and if we get a call that says there's been a dispute that has risen to the level of a lawsuit then they'll have to make a judgment call do we want to proceed with this or do we want to wait and resolve that dispute. And that would have to depend on them to contact us.

Ms. Ballenger: Can I ask a question? Is there a time limit as to when the other opposing party can come in and say, or put this restraining order on us or once it's approved, is it approved and then we don't worry about it anymore?

Mr. Flook: I would say, and this is something you may want to talk to your family attorney about, because I represent the board so I can't really give you legal advice but I can tell you if they raise their issue after you have gone through the process and gotten a declaration from this Commission they may have waived some of their rights, but if you are talking about a restriction that is a covenant in your deed somewhere that cannot be changed by this organization.

Ms. Ballenger: Sure I understand that.

Mr. Flook: So whatever we as the County would do through this Committee would end up possible becoming subject to that deed restriction and that is a legal question I would have to look into. But normally this is worked out before this application phase comes up so I would say our group should proceed under normal circumstances and I guess caution you something that need to be checked out thoroughly.

Ms. Ballenger: At this time there's no evidence that there was any issue with subdividing this up otherwise we would not have bought the property and we did a thorough title search and thorough questioning of the previous owner and nothing came up, this is news to me. I have never heard of there being issue with this.

Mr. Flook: Well a suggestion would be is to take your deed to this land meet with your own attorney if they handle real estate matters or a Real Estate Attorney of your choosing and get it examined there and we can proceed. It will take time to go through this process so you have some time but I think just in general comment it might be better for everybody if that gets resolved before the final decision is made in this, so we don't have to even ask the question of what it means when we've made a declaration then the deed shows up, but I wouldn't stall the process because your process will take enough time for them to proceed and get their question resolved.

Mr. Tapp: Well Tim to clarify though this is the final action.

Mr. Flook: This is the final plat?

Mr. Tapp: It's a rezoning/final plat because they are replating there is not another follow up.

Mr. Flook: I am sorry I just saw the rezoning I didn't see the final on this.

Mr. Tapp: That's okay.

Mr. Flook: Well then we

Mr. Tapp: It's up to the Commission's purview and perhaps yours. There are two options here either progress through it or

Mr. Flook: You can proceed today or if you wanted to allow them some time to go get their deed checked out.

Mr. Tapp: I don't think they have a deed you just have a sales contract, Kara, or did you acquire it already?

Mr. Beggs: It says in the e-mail it's a sale contract, it's not a deed restriction.

Mr. Tapp: Way back in 1996 yes. Kara you acquired the property right?

Ms. Ballenger: I'm sorry?

Mr. Tapp: You bought the property?

Ms. Ballenger: Yes it is ours.

Mr. Flook: Yes that is what is says in the e-mail my concern is in terms of the lay person saying what they have agreed is my immediate reaction to this person could be saying apples but talking about oranges. Really I could not tell you if this means a hill of beans without looking at a deed. So I think that is kind of the issue and I apologize I look and I didn't, I saw the rezoning I did not read the full heading.

Mr. Tapp: And this came very, pretty quickly here.

Ms. Viviano: It came after we sent the staff reports.

Mr. Tapp: Yes this came to light after staff reports, Monday, yesterday it was brought to light.

Mr. Flook: Right now there is no reference of a deed restriction and even if there was a deed restriction that is outside of the scope of what you do. You can go ahead and vote today if you wish and it really is more matter for them and if they are real comfortable that they have checked out their deed then they are okay, Deed restrictions I guess.....

Mr. Beggs: Although if approve a final plat it'll have to come back and be vacated, I guess that was my original question.

Ms. Viviano: Tim could we hold it for 90 days before we send it to the County Commission?

Mr. Flook: You could hold it, yes absolutely, you could continue this.

Ms. Viviano: I mean could we hold it until this could be taken care of?

Mr. Tapp: Because sometimes we have property line disputes things like that it's more of a civil matter but it still does have some implication or possible implication to the board.

Mr. Flook: The only reason to continue it would be so that we don't have to figure out what happens if a court comes in and says there was a deed restriction and then we have to come back and do something we've never done before which is, okay how do we undo what we just did.

Mr. Tapp: I don't see a court doing that though Tim, of course we are speculating are the Royals going to.....

Mr. Flook: I don't think there is a way to do it I mean I don't know how they would do it but maybe a court could order them to come back and apply to return it. I don't know how you would remedy the situation.

Mr. Tapp: Because I would assume the court would see that this board followed the guidance of the Comp Plan, Comprehensive Plan.

Mr. Flook: And we are not a party to the case.

Mr. Tapp: No.

Mr. Flook: They would have to somehow make us a party to the case and say that somehow we were unable to do it. I don't think there's anything legally prevents you properly approving and passing this on. It's really up to you I think.

Mr. Beggs: I would agree, but I would hate to have the applicants to have to go through more costs to vacate a plat after going through that was kind of my concern is wouldn't be better to resolve this before anyone spends more money, actually not us it would be the applicant, that would be my concern.

Mr. Knisley: Have you ever talked to the Reardon's about your property?

Ms. Ballenger: No, this is the first time they've come forth and said there was an issue. The prior owner Donald Burns gave us no indication that there was anything having to do with it not being able to be subdivided, nothing in our contract nothing in the deed as far as I can see. I mean time is of the essence for us we really want to get this subdivided so that we can sell this portion to my parents and we can move on and get going with our house and go from there, so I guess to be honest I'm not worried about this I don't have any evidence that says the contrary. I felt that we did our homework and..

Mr. Flook: Are you saying you had a title company review your deed, look at the deed and your title policy didn't have any mention of any kind of reservation about a deed restriction?

Ms. Ballenger: No, none at all.

Mr. Beggs: It sounds like there is another seller in between the Reardon's sold to somebody and then you bought it from them.

Ms. Ballenger: Yes there are at least one or two other sellers in between us and the Reardon's. And what I don't understand is next door to our lot they've clearly section off a piece in that was all part of Golden Acres, so I don't understand why it would be an issue now with our lot.

Mr. Tapp: It was not part of the original Golden Acres.

Ms. Ballenger: Oh it wasn't, okay.

Mr. Tapp: You can see the grey outline.

Ms. Ballenger: Oh is that all?

Mr. Tapp: And it was done a long time before that so I am guessing 60's or 70's some time frame around there. Kara would 30 days present a major hurdle in your process or time line of what you would like to see to be done here? Do you have your title report here with you right now?

Ms. Ballenger: I do.

Mr. Flook: I think it would be very easy for them to sit down with the title company, sit down with a lawyer and the title company and look at their deed, deed restrictions and their policy and see if there are any exceptions in their policies about deed restrictions or unrecorded deed restrictions something like that.

Mr. Tapp: Kara the only reason I bring up 30 days is that we can table it until the August meeting, which would be August 6th we'd just push it a month basically to clear it all out.

Ms. Ballenger: So what would be the plan within this 30 days. Is this somebody you guys going to be consulting or is there somebody we're consulting.

Mr. Flook: The plan would be you would go get a definitive answer to the question is there a deed restriction in your deed.

Ms. Ballenger: From a lawyer or

Mr. Flook: Your title company can help, we can talk a little bit after, your title company can help you and your lawyer can help you by looking at your deed. It sounds to me like you've looked at quite a bit but doesn't sound like you actually asked that question specifically the way we're talking about it today, so maybe

Ms. Ballenger: There was no reason to, I mean.

Mr. Flook: I think on the face probably not. You might be right but I think what we're kind of discussing here is although legally there is really nothing that stops us. This Committee from acting in your favor, the point I'm trying to make is if someone really were to try and I hate to sound like a storm crow, if somebody were to try and escalate this then you might have some lawyer not knowing any better try to name the County as a party to get them in to block this and the next thing you know we are writing briefs and trying to explain why they can't include the County in their fight and so if in 30 days you can take your deed, set down with a Real Estate Lawyer and I can give you a couple names of people out there if you want, you can get a real strong comfort zone that there's no deed restriction then these people unfortunately did not do the legal thing they needed to do to be able to revoke anything and then this means there is really nothing standing in your way and we have no fear that we're letting you walk into a big fight that drags the County into it to try and explain that we're not involved. So I think that is kind of what the idea would be sitting it over, but it is up to the Committee.

Mr. Knisley: Thank you Counselor. What is the feeling of the Commission, any comments, discussion?

Mr. Troutwine: I think we approve it.

Mr. Beggs: I am kind of on the other side I think we table it for 30 days and see how everything, how the cards fall.

Mr. Knisley: I agree with Mark, through the years we've had a couple issues like this happen and we want the applicants to come to us with clean hands and we don't want to get involved in. We are looking out for the benefit of the citizens and the applicants and I think 30 days would give you good comfort level to check this out and make sure that it is right, it'll certainly make I am sure the Board would be happy that you do that.

Ms. Ballenger: Okay.

Mr. Knisley: We see no problem, but this could come up at a later date or whatever but I think this is my opinion. Karl what's your thought?

Mr. Walters: If we approve it it'll probably come back on us and I think it would be in her best interest to turn around and get it searched make sure there are clarification and everything and cleans her part of it because really I don't have a problem approving it but on her part for her safe being I think it would be in her interest to make sure, I really believe that.

Mr. Carlson: Well I tend to agree with you I do understand, Cecil says too I think the applicant would like to get going and I hate to see us impede her but I think, I just have a bad feeling that there might be something on the title report and you really need to check into it. I think we ought to give you that time and that excludes ourselves into the problem.

Mr. Knisley: I believe it could be done in 30 days don't you? I sure you could.

Mr. Flook: It would be pretty simple. Just take your title insurance policy and your deed and met with your lawyer or your title company or both and it would be more work to set up the meeting then it will be to actually attend and get it reviewed. It'll probably, you'll come out of there with some sort of definitive opinion on where you stand on it, and then in 30 days there could be a vote and don't have to worry about it.

Ms. Ballenger: So would we need to return to the County Commission meeting for it or this sort of meeting?

Mr. Tapp: Same Board just a month later.

Ms. Ballenger: Okay.

Mr. Tapp: Same time.

Ms. Ballenger: So August.

Mr. Walters: I think she ought to come to you once she gets clarification.

Ms. Ballenger: Okay.

Mr. Tapp: Yes, Kara you will work with us and once you get verification maybe a letter or some kind of correspondence from the Real Estate Attorney and/or Title Company then we'll present again and here is what we found out and they'll vote.

Ms. Ballenger: Okay.

Mr. Walters: Thank you.

Mr. Tapp: So Kara are you clear on what needs to happen between now and ...

Ms. Ballenger: Yes, I need to verify that the subdivision is not contra.. or it's okay with the previous... contradicting the previous deeds and contracts and things.

Mr. Tapp: There is no restriction on the deed that says you can't do what you are doing, basically. Okay?

Ms. Ballenger: Alright.

Mr. Tapp: Sorry about that it did came up very last minute, 11th hour.

Mr. Walters: Still if you have questions I am sure Matt will help you through it.

Mr. Tapp: Right.

Mr. Troutwine: I have a little problem with somebody coming before us and basically getting ambushed by a letter that we don't know if it has any creditability. It's a letter it's not even from an attorney, not from a title company. I know I would hate to appear before a Committee and get ambushed like this.

Mr. Tapp: Yes you have two options as to vote approval now or table it 30 days that's the Commission purview.

Mr. Knisley: We're assuming it's going to be an ambush but I don't know I still ought to

Mr. Beggs: I think timing was poor on the e-mail, I think that's the whole issue.

Mr. Troutwine: I think it's definitely an ambush whether it's has any validity or not I don't think anybody on this Committee knows.

Mr. Beggs: Yes I think that is why would argue to table it so we do know, before we step into an ambush. I would hate for us to get caught in the crossfire.

Mr. Carlson: You agree?

Mr. Flook: Well I think in all fairness I think it's a low probability that the County gets named and gets drug in I don't want a... so I didn't want to sound too much like a storm crow, because sometimes you let perfect get in the way of progress and I want to make sure you guys feel free to vote and I am not compelling you on that, but yeah you know there's to this point it is just an e-mail, it doesn't invoke the right terminology as far as to really say there's restrictions so it's not sure what is meant it just raises a question about whether or not we're going to have to revisit this later or somebody's going to try to put us into the middle of it. And I can't promise you that won't happen even though legally there's nothing preventing you from that and there's nothing a court can say that what you did was wrong, but you know in the 14 maybe some odd years I've either been a County Attorney or work with the County at some point, the County gets sued for a lot things that there is absolutely no legal bases for it, there is always one or two a year or sometimes I think it follows me. So the only reason to table this is because I'm your lawyer and I have issues following me. I would say though your point is a valid one it's an e-mail out of the blue from someone didn't even attend, but ultimately it's up to you all, whatever your comfort zone is on this is what you guys should be voting on your conscious and I would say if someone has a motion then make the motion and

Mr. Tapp: Real quick Tim and Chairman Knisley, two comments, one it wasn't just an e-mail, I believe Friday the wife called got a hold of Debbie basically voiced somewhat the same thing. Then on Monday the husband attempted to call me and then we got the e-mail so just to clarify exactly what happened when. Then secondly I think there is a happy compromise here one of two scenarios, one is you add a condition to approval that the applicant will supply hard evidence proving that there's no deed restriction that were unknown to the Commission at the time of the approval something to that extent or you can say your approval is good but for 30 days it can't go before the County Commission. It's up to you, because I do believe like Tim said she's not going to find anything, I'll tell you that right now, and she's not going to find anything. So if you feel comfortable with the approval....

Mr. Walters: Put it as a condition.

Mr. Tapp: Put as a condition and/or have a delay in there saying we approve it with a 30 day delay before it can go before County Commission, just to make sure that she can have enough time to get that condition met.

Mr. Flook: Matt actually you're on to something maybe that might be an idea but I would suggest to actually don't make the deed, the content of deed a condition so we don't set a precedent for opinion about the validity of a deed restriction. So then basically you just approve it and set it for the Commission 30 days out, plan it 30 days out. Then in your 30 day lag time and they just need to know they need to go get with their lawyer. That might be a way of solving it but we would have to basically

have faith that you all will go get that sorted out that when you get to the Commission meeting that you got yourself a legal opinion you've got your homework done and a lot of times if you have a restriction like this in contract it only binds that one party and not later parties, but if it's a covenant put in the deed then it could run with the land for decades. So it creates a potential issue for you.

Ms. Ballenger: Well I don't mind that latter option of going ahead with the approval and I am definitely a responsible person I will and I don't want this to fail either, this is going to be a lot for my parents you know to retire on and so I certainly, you know that's what we bought it with the intention of and I don't want to come across anything that would restrict us from doing that anyways. So I'm totally okay with doing my homework and figuring out if there is any issue with this, within this 30 day time span of getting to the County Commission meeting.

Mr. Walters: Sounds fair to me.

Mr. Beard: Can I ask a question?

Mr. Tapp: Do you mind stepping to the microphone?

Mr. Knisley: State your name for the record.

Mr. Beard: I am Kenneth Beard, Kara's father, I was just going to ask that the e-mail eludes there is some document can we not just ask the Reardon's to produce a document, rather than us go searching for it and may not find it?

Mr. Flook: I would say that is your choice, but

Mr. Beard: I mean answer the e-mail to that effect.

Mr. Flook: I would look at it this way if they Reardon's go to a lawyer the lawyer's going to ask all the right questions and they will produce the right documents to you they may produce the wrong document not knowing their producing the wrong documents. Does that make sense? They can give you the wrong the document and your deed could have a restriction, we don't have your deed and we can't make that call for you anyway, it would be very wise to have that work out now rather than later, cause it could present a costly problem and from the County perspective, all be at a low probability and there would be limited legal ability for somebody to get anywhere with it, they could create somewhat of a headache for the County, trying to drag us into it, trying to undo, trying by force of the court to undo a plat. So they might not succeed but we would still have to wade through it and this one is a pretty simple solution if you could just go and get your deed and met with a lawyer you would know pretty quickly, that's kind of the best way of putting it. It's a very simple, it's kind of an ounce of prevention worth a pound of cure and the ounce of prevention is pretty easily done on this one.

Mr. Beard: Okay, thank you.

Mr. Carlson: Mr. Chairman I would like to make one comment I am kind of in agreement with Cecil. I'm new on the Committee but I can see it happening this is an ambush and it could happen it could set a precedence that could happen all the time. I think as a group we ought to take a stand and if we are going to, they meet the approval that we should grant it and they should be allowed to proceed and if there is a legal battle.

Mr. Beggs: So Tim if we are going to put an additional condition on here what would that say? Because you are talking about a timing.

Mr. Flook: I would suggest that you only use the language that Matt had mentioned about having that 30 day period to send it to the Commission and if they agree on the record they are okay with that then we can do it that route.

Mr. Tapp: So the condition can read '30 day delay before it can be presented to the County Commission'?

Mr. Flook: Yes.

Mr. Tapp: Something to that extent.

Mr. Knisley: With a document (*inaudible*)

Mr. Carlson: That wouldn't be a 30 day from today though or would it be...

Mr. Tapp: August whatever 30 days is.

Mr. Carlson: It would put us to the August meeting?

Mr. Tapp: Not yours but County Commission in August.

Mr. Carlson: County Commission right, so it's going to delay them they'll have to come before this board next month?

Mr. Tapp: You say roughly 15 days give or take around there.

Mr. Carlson: For practical purposes they could do this in a fairly short period of time?

Mr. Tapp: You can set the delay time amount to whatever you want it to be, you could have no delay.

Mr. Carlson: It could possibly be corrected and she could appear before the Board couldn't she saying she want to withdraw it.

Ms. Viviano: You could put a maximum of 30 days.

Mr. Tapp: Like a maximum of 30 days, so let's say Kara supplies us information that is good enough then we can go to the 22nd July Commission, if we get it by the 15th, it's always a week in advance so we have to get the information to the Commission Clerk to get it on the agenda etc, etc.

Ms. Viviano: You could do it as a maximum of 45 days and then if she doesn't get before 30 days...

Mr. Tapp: Like Debbie said you can set it as a maximum so not to exceed or you know.

Ms. Viviano: So if it's a minimum it would be okay.

Mr. Tapp: What it boils down to is in my professional stand point what's inside the e-mail and what has been discussed over the phone all their points have no authority, no jurisdiction over how you are to approve or not approve development request which is rezoning and plats. We have clear language in our Land Development Code that talks about here's the approval criteria you can see it in the staff report. Do they met those five conditions of rezoning, yes, okay great you got the rezoning and then Comprehensive Plan guides future development so does it met the Comprehensive Plan? Yes okay and if it was in a sales contract you can say the house can't be painted pink we don't care about the color of the house so from my professional view point I feel very confident voting approval.

Mr. Knisley: Let's just put it to a vote I think, if you'll put that as another condition.

Mr. Beggs: Can we make a motion adding it and we can vote on the motion? Okay. Mr. Chairman I make a motion that we add an additional condition, I don't know if it's an F or what the number needs to be, but should read a maximum 30 day delay before presenting this case to the County Commission. Is that verbiage?

Mr. Tapp: You say 30 or 45 days?

Mr. Walters: 30.

Mr. Beggs: I said 30, I said maximum of 30 days.

Mr. Tapp: Okay.

Mr. Carlson: Question, does that mean that they will not be able to go to this next Commission?

Mr. Tapp: Well like I said if Kara can provide the information usually a week in advance of the County Commission meeting so as the Chairman says July 22nd so if you get it by the 15th which is next Monday you need some type of evidence from an attorney whatever it takes then you can go to County Commission.

Mr. Carlson: Could possible.

Mr. Walters: Go to Commission.

Mr. Beggs: Should read a maximum of 30 days delay, so you get it done quicker that would allow you to proceed on and would kind of give you some break.

Mr. Tapp: Yeah a maximum of 30 day.

Ms. Ballenger: We can go to July 22nd meeting and for some reason it exceeds that July 15th date then it would be pushed to the August date.

Mr. Beggs: Yes that would be the intent. So whatever that verbiage needs to read that would be the intent.

Mr. Tapp: Yes so what is the language of the additional condition, Mark? A maximum of 30 day.

Mr. Beggs: A maximum of 30 day delay before presenting final plat, rezoning or final plat to County Commission for approval.

Mr. Tapp: How about the case?

Mr. Beggs: You want to say case.

Mr. Tapp: Yeah the case.

Mr. Beggs: Okay that's fine. July 13-113RZ

Mr. Tapp: Okay we can do that even "A maximum of 30 day delay before presenting the case to the County Commission" then after the case put parenthesis number Jul 13-113RZ/F. So, a maximum of 30 day delay before presenting the case "the case number" to the County Commission. Is that correct, Mark?

Mr. Beggs: Yes I think that will work.

Mr. Tapp: So that is the motion on the floor Mr. Chairman.

Mr. Knisley: And that is the third condition then?

Mr. Tapp: Yes condition number three.

Mr. Carlson: Mr. Chairman I will second that.

Mr. Knisley: Alright, thank you there has been a motion for the third amendment and a second vote?

Mr. Tapp: Karl Walters?

Mr. Walters: Approve with conditions.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Approve.

Mr. Tapp: Jim Carlson?

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approve for the amended conditions.

Mr. Tapp: Chairman Gene Knisley?

Mr. Knisley: Approved with the three conditions. Thank you and good luck.

**Final Vote: 5/0/0 Approve Final Plat July 13-113RZ/F Winterfell Highlands,
A Replat of Lot 1 Golden Acres
With Three (3) Conditions**

Mr. Beggs: Now that motion we just passed was to just add the condition correct?

Mr. Tapp: No you made a motion to approve.

Mr. Beggs: To approve okay.

Mr. Tapp: With the addition.

Mr. Beggs: To approve that as well.

Mr. Knisley: Director Tapp, you'll want to have communication with them after they find out.

Mr. Tapp: Actually it will be Debbie because I am going on vacation July 5 thru the 15th, but I have full confidence in Debbie and Tim, I am sure to make sure it gets done. But I will be there on the 22nd if it happens to go to County Commission.

Mr. Knisley: Alright. Last case this evening is case number 114-CUP a request for a conditional use permit to erect a commercial communication tower, specifically being a high speed wireless service antenna, on Agricultural (AG) zoned property located at 12004 NE 172nd Street. The applicant is Fred Walter, representing Real Beef, LLC.

Mr. Tapp: Mr. Chairman first though lets go back to Winterfell Highlands real quick Kara, I want to be very clear that the recommendation and the approval vote was for the conditions of the plat because we are supposed to have two votes one for the rezoning and one for the final plat and so in the staff report the conditions that were there or ready was for the final plat so should we perhaps go back and make a motion for approval for the rezoning?

Mr. Beggs: I agree.

Mr. Tapp: Because there are no conditions.

Mr. Knisley: That is right.

Mr. Tapp: I just want to be very clear on that I didn't want to miss that.

Mr. Beggs: So Mr. Chairman I make a motion that we approve the rezoning from Residential Low Density District (R-1A) to Residential Rural District (R-1) for proposed Lot 1 and to Residential Urban Rural Single-Family District (RU-80) for proposed Lot 2 of Winterfell Highlands a Replat of Lot 1 Golden Acres.

Mr. Knisley: Thank you there has been a motion to approve the rezoning do I have a second?

Mr. Carlson: Second.

Mr. Knisley: Thank you, vote please.

Mr. Tapp: Karl Walters?

Mr. Walters: Approve.

Mr. Tapp: Cecil Troutwine?

Mr. Troutwine: Approve.

Mr. Tapp: Jim Carlson?

Mr. Carlson: Approve.

Mr. Tapp: Mark Beggs?

Mr. Beggs: Approve.

Mr. Tapp: Chairman Gene Knisley?

Mr. Knisley: Approve.

**Final Vote: 5/0/0 Approve Rezoning July 13-113RZ/F; Winterfell Highlands, A
Replat of Lot 1 Golden Acres
With Three (3) Conditions**

Mr. Tapp: Thank you.

Mr. Beggs: Do you need one for the final plat?

Mr. Tapp: No we already that with your change in condition.

Mr. Knisley: We jumped around.

Mr. Tapp: Yeah.

Mr. Knisley: Alright I have read the case number 114 Conditional Use Permit do we have a staff report on that?

Mr. Tapp: Alright Mr. Chairman I would move that we add the staff report is part of the record.

Mr. Knisley: Alright so be it.

Mr. Tapp: Summarized the staff report July 13-114CUP dated June 3, 2013. Need to add a condition number 10 and we need to get the language from a previous staff report, which we should have gotten, but it basically reads “FAA approval prior to County Commission Hearing”. We’ll need to add that and Debbie we don’t have the exact language but it’s basically FAA approval before you can present to County Commission. Staff recommends approval with the conditions and the additional 10th condition or number 10 condition, which will be the FAA approval prior to presentation to County Commission. Fred Walter is here as well as representatives from Isotech, Tony Holland.

Mr. Knisley: Thank you. Mr. Walter would you like to come forward?

Mr. Walter: Good evening, Fred Walter representing Real Beef, LLC, I will refer any questions you might have to this tower to Mr. Tony Holland of Isotech and KC Coyote.

Mr. Knisley: Have you read the staff report?

Mr. Walter: I have read the staff report.

Mr. Knisley: The conditions and you’re in agreement.

Mr. Walter: Yes.

Mr. Knisley: Alright, thank you.

Mr. Carlson: Fred just a question, is it really Water District number four?

Mr. Walter: No, because we are on the City of Lathrop over there and it’s Kearney Fire Department.

Mr. Carlson: Yeah the Kearney Fire Department.

Mr. Tapp: Typos.

Mr. Carlson: Okay.

Mr. Holland: I am Tony Holland from Isotech and KC Coyote High Speed Wireless and I am here to answer any of your questions.

Mr. Carlson: Are you going to be the owner of the tower?

Mr. Holland: No sir, Mr. Walter is the owner of the tower. We have approximately forty-eight tower hosts who own their own towers they are part of our plan to provide an economic advantage to our communities and also add choices to our citizens to choose which type of or which partner to partner up with on high speed wireless internet. We cover six counties and we’ve been before the Commission before primarily for the same thing and these towers are typically a shorter tower you can see the heights are 70 feet, we call it a small cell technology not very much like, I mean it’s really unlike cellular towers, you don’t see them in the community, their low, lower to just peek over the trees of the ridges and we kind of have a different internet, I know that’s a technical thing but we do have multiple

fiber connections and multiple towers are all connected together and multiple carriers. Since we started this project in 2005 we have grown 25% per year and we're adding jobs into the community as these areas begin to grow. I would address the FCC report on June 27th we filled FCC form 854 and received a file note on that we also filed a FAA case number for that tower and for that location and the FAA will take whatever time they take but usually we get the reports back when we requested in the time frame that is necessary. Those forms and requests are in process as of June the 27th.

Mr. Knisley: Have you reviewed the conditions?

Mr. Holland: Yes sir I have.

Mr. Knisley: Do you have any comments on any of those?

Mr. Holland: They are just fine.

Mr. Knisley: Just like they've always been.

Mr. Holland: Just like they've always been. We really appreciate the County working with us on these things.

Mr. Carlson: I received that in the mail and I thought I would bring it with me.

Mr. Holland: Very good.

Mr. Carlson: If Fred owns the tower why are you billing?

Mr. Holland: Basically in our program our tower hosts are really giving advantage to the community and we turn back around, if he owns the tower, then we come back as a tenant on that tower. Our internet, we consider our internet the fourth utility, many of our customers have told us that you can't just turn it off and so once we get on the tower we sign a long term agreement, a lease agreement with our tower host so that we can stay on that tower on that service if anything happens to our company it can be carried on and still provide these services to the community. So this is the process that we go through. The tower host has total control if they want to change and the end of the lease they certainly can if we don't continue on then there's options for them to add their tower their property to another network to continue to service their community.

Mr. Tapp: Mr. Chairman to be clear when you asked if the owner and then Tony with Isotech have reviewed the conditions we want to make sure that condition number ten the new one is of understanding that is part of that question from the Chairman is that you agree with that FAA addition.

Mr. Holland: We do agree those that have been read or have been filed.

Mr. Tapp: Just wanted clarification thank you.

Mr. Holland: That's correct.

Mr. Knisley: Director Tapp I know we put a time limit on these towers but I don't remember if it is on this high of tower or is it....

Mr. Tapp: Its 15 years the first condition, Mr. Chairman.

Mr. Knisley: I over looked that.

Mr. Tapp: Its 15 years.

Mr. Knisley: Well that was too easy. Any other discussion from the Commission? Any comments from the public? Thank you sir, if you will come up and state your name.

Mr. Homoly: Guy Homoly I live right behind where the tower is going to go up.

Mr. Knisley: Can you spell your last name?

Mr. Homoly: H-O-M-O-L-Y.

Mr. Knisley: Okay thank you, and your comment?

Mr. Homoly: The first concern is that you say it's a commercial tower and it's there for the community use.

Mr. Holland: That is correct.

Mr. Homoly: Does Mr. Walter's have the privilege of saying no you can't use it.

Mr. Holland: No.

Mr. Homoly: So he has not control over that?

Mr. Holland: No it's in the lease agreement.

Mr. Homoly: If we want to employ you to give us that service then you can just it.

Mr. Holland: That is correct.

Mr. Homoly: There's a lease agreement now say how long is it? Is it a year, two years, five years?

Mr. Holland: Five years with five year renewables up to the 15 years until we come back before the Commission.

Mr. Homoly: So every five you have total control of the tower for five years, right? We have internet capabilities right now with another company. Will your tower interfere with it if you use the wrong frequency?

Mr. Holland: No let me explain that, I would be glad to explain that to everybody for the record. Basically we're working in both licenses and unlicensed frequency that are designed for by the FCC for communities use. In our area, our other competitors in there they use a certain frequency there are eleven channels, there are three non-overlap in frequencies we all know which ones we use in our progress we have migrated to a different channel that has 15 channels in it and there's six non-overlapping channels our competition doesn't use any of those in this area at this time. Those would be the frequencies we use. The radios are a little bit different than what the competitors around are using and then our plan was to go from the what we call the 2.4 which everybody uses in their house and wireless because it got really noisy to move to 5.8 giga hertz. That's our current channel now, we are licensed by the FCC to move to license channels whenever the noise or the interference becomes too much for us or our competition. None of the competitors in this environment ever specifically sit on each other's channels it doesn't work for them and it doesn't work to interfere so it's a pretty much a gentlemen's agreement among all of the carriers that are working in the unlicensed frequencies that it doesn't do you or your customers any good to try to use a frequency that somebody else is using. We have pretty much an agreement first come first serve, I have worked with several other of the carriers that are surrounding our communities that we cover over 25 hundred square miles. When they call us if they feel like they've had some interference we've done things like go completely silent for an hour to let them diagnosis where their frequency is, where their interference is coming from. Upon request of changing channels we've been able to use one of those other non-overlapping channels to migrate our customers away from that. We all pretty much work in that environment, it's been that way since the FCC allocated it and it's our goal not to interfere with anybody else's customers as well.

Mr. Homoly: That was a great sales pitch. You know I would have said the same thing well you can all see as he admitted that there is interference problems. Okay we all know it and our carrier told us that there's probably going to be interference problems. Our concern is we put it in there's interference problem who do we call to get results? Do we call you we call our guy?

Mr. Holland: You call us and your carrier and we'll both get together and work those out. Doesn't do either one of us any good to get into the frequencies that we're stepping on each other, it's about as bad as trying to listen to a FM station driving down the highway between to cities you can't make out what either station saying. So it's to our own advantage to really separate ourselves and FCC's allowed us to have those channels so we are just a little more advanced right now, we've already got into the other channels that their (*inaudible*) usage, that may come from interference later. Interference also comes from other then carriers, interference comes from your home appliances, it comes from cordless speakers, it comes from cordless phones, it comes from the kids in the neighborhood who are playing their wireless games. So we all have to live in that type of environment to figure out what's the best place, the best frequency and the best power and we all should be working right within specifications of the FCC licensing for having the privilege of using these channels.

Mr. Homoly: You're a great salesman. You can see everything that's punctuated by we should work together, we cooperate, we do this. Our fear is that if a stronger commercial tower gets in there and blows ours away and we complain we'll just have a deaf ear. You know he doesn't own the tower and we can see a hundred excuses coming up saying it's multiple use people this this and this and like we all do we use our computer for our business and to have somebody come in there and blow us away we have no recourse we're just kind of helpless and that is my fear. You explained it as a perfect salesman would but you've noticed all through his comments where it shouldn't do this, we work together he admits there's been interference there's channels and stuff so it's not a clear cut it's a good deal don't worry about it and there is no recourse if something goes like this. I know Matt said he's approved a lot of them and you do a great job and do all the right things I am not here to stifle and if we could use it and it makes us better we'd use it you know but we don't know if, now we talked to you for fees then right so if we want to go on we deal with you not the Walter's?

Mr. Holland: (*inaudible*)

Mr. Homoly: Okay.

Mr. Holland: I would like to explain and to help you with your recourse you do have recourse and if either one of us as a carrier or anybody doesn't work it out for you then you have the FCC and we can give you the website link and things like this typically we have never gotten to that point with any of our competitors in fact I had two competitors over the last couple of year that decided that it was probably easier on their customers and we took their networks and help their customers to rise up where they were and so we all really work together and I have had some communications with your carrier before, we have been in meetings before and so we kind of know each other.

Mr. Homoly: One last statement they have a tower right down the street, Glen's?

Mr. Holland: That's a personal tower that's his.

Mr. Homoly: And we were not allowed to connect onto it.

Mr. Holland: No there's no transmitter on that.

Mr. Homoly: So why's that tower different then the tower you are putting up?

Mr. Holland: This one has a transmitter on it and its commercial and this will be rebroadcasting the signal. So what he has is kind of, it would have been a TV tower or security tower but he just has his own radio on it just to get over his trees just a real short one, shorter than this.

Mr. Homoly: It's totally different than what you are doing?

Mr. Holland: Yes it's not the same.

Mr. Homoly: Okay thank you for your time.

Mr. Knisley: You're very welcome. Any other comments? Any comments from the Commission?

Mr. Carlson: I have one. Have you made a study of the neighbors? This just is a local tower correct? Because I am part of this. I am part of the same company he works with.

Mr. Holland: Yes.

Mr. Carlson: And I just wonder if you're going to have any business. Will you stay in the neighborhood if you have no business?

Mr. Holland: Well yes. That's not a problem because primarily our tower host come to us because they have a need and we've surveyed his area and area that his family's in because they asked us if we can provide them our type they would like to choose our type of internet. So we've gone over there and we've had several different calls from people up and down that area that haven't been able to answer service they haven't chosen anybody else and they haven't gotten the service and like I say we have a little different type of internet as well. And so we have a premium internet that not everybody buys into our internet, but we would stay there just because he owns the tower and he wants the service and it's to the neighborhoods benefit and the communities benefit it's an economic development issue when the County gave us a permit for a tower on 144th Street we had a Realtor call us on the day that the permit was issued he closed on two houses that he had been holding on because they didn't have internet. So it does have an impact on the economics of the community as well. This is a fairly small distance that these towers cover and where cellular companies and others put their towers way up high on hills and can see these little sticks all over the place, these things just kind of sit in neighborhoods and you really have to look for them. And this one is pretty much if you look at the terrain, Mr. Walter's is kind of in a bowl so if you think about how that thing sticks up at the bottom of the bowl and can only just serve, it only reaches out to the people that are in that bowl. Because it's in the bowl it's anything on the outside that can come down into it so it works out pretty good for us and for the community to take on that model.

Mr. Knisley: Any other comments from the Commission? Being none do I have a motion do approve the request for Conditional Use Permit?

Mr. Beggs: Yes Mr. Chairman I make a motion that we approve the Conditional Use Permit to erect a 70' tall commercial communication tower specifically for high speed wireless service with the conditions shown in exhibit A.

Mr. Knisley: Thank you.

Mr. Tapp: And the additional condition.

Mr. Beggs: And the additional condition number 10 which is the FAA approval prior to County Commission presentation.

Mr. Knisley: Thank you for the motion do I have a second?

Mr. Walters: Second.

Mr. Knisley: Thank you there has been a second, vote please.

Mr. Tapp: Karl Walters?
Mr. Walters: Approve with conditions.
Mr. Tapp: Cecil Troutwine?
Mr. Troutwine: Approve.
Mr. Tapp: Jim Carlson?
Mr. Carlson: I am going to abstain.
Mr. Tapp: Mark Beggs?
Mr. Beggs: Approve with conditions.
Mr. Tapp: Chairman Gene Knisley?
Mr. Knisley: Approve with conditions.

Final Vote: 4/0/1 Approve Conditional Use Permit July 13-114CUP; Commercial Communication Tower With Ten (10) Conditions

Mr. Knisley: That's our cases for this evening; I would like to proceed with the election of a Vice-Chairman. Do we have a motion or a discussion on recommendation, nomination?
Mr. Carlson: I would like to nominate Mark Beggs.
Mr. Walters: I second that.
Mr. Knisley: Alright, it has been recommended to approve Mark Beggs for Vice-Chairman, vote.
Mr. Tapp: Karl Walters?
Mr. Walters: Yes.
Mr. Tapp: Cecil Troutwine?
Mr. Troutwine: Yes.
Mr. Tapp: Jim Carlson?
Mr. Carlson: Yes.
Mr. Tapp: Mark Beggs?
Mr. Beggs: Yes. I was just thinking of the ambush comment earlier but ...
Mr. Tapp: Gene Knisley?
Mr. Knisley: Yes. Congratulations.
Mr. Beggs: Thanks.
Mr. Knisley: Is there other business, Director any comments?
Mr. Tapp: None that I know of.
Mr. Knisley: Any comments from the Commission? Being none do we have a motion to adjourn?
Mr. Beggs: I make a motion to adjourn.
Mr. Knisley: All in favor?
All: Aye.

Meeting Adjourned

Chairman, Planning & Zoning Commission

Secretary, Planning & Zoning Commission

Recording Secretary